

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.238 OF 2001**

Anwar Usman Shaikh
Aged 25 years, R/o/ Village
Pimpalgaon- Baswant,
Taluka Niphad, District: Nasik

...Appellant
(Orig. Accused No.1)

Vs.

The State of Maharashtra

...Respondent

Mr.S.P.Kadam Advocate for the Appellant
Mrs. P.H.Kantharia A.P.P for the State

**CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 3RD AUGUST, 2006**

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1.The appellant (original accused no.1) has been charged, convicted and sentenced by the learned III Additional Sessions Judge, Nasik for having treated his wife the deceased Yasmin Anwar Shaikh with cruelty and harassed her physically and mentally for trifling reasons punishable under Section 498-A of the Indian Penal Code. He has also been charged, convicted and sentenced for committing

murder of his wife by pouring kerosene on her person and setting her on fire on 10th August, 1999 at 18.30 hours in his house at Pimpalgaon-Baswant, Dist: Nasik punishable under Section 302 of the Indian Penal Code. His relatives (original accused nos.2,3,4 & 5) are also charged with the said commission of murder but have been acquitted. There is no appeal from such acquittal. The appellant alone has filed this appeal upon his conviction by the trial Judge.

2. The date, time and place of the incident is not denied. The factum of the unnatural death is also admitted. The parties had a 3 month old child. Disputes between the parties have also been admitted, though the case given by both the parties is different. Whereas it is the prosecution case that the deceased died a homicidal death, it is the case of the appellant that her death was accidental while cooking food.

3. Upon the case of cruelty and harassment as well as of the incident of murder the prosecution has examined 15 witnesses i.e. P.W. Nos.2,3,4,5,9 & 11 are the relatives of the deceased wife, whose evidence is largely repetitious and hence, would be considered together. The prosecution has examined P.W.1, the neighbor of the appellant/accused who also served as a panch for the preparation of the spot

panchanama. Upon the complaint of the P.W.2, the mother of the deceased inquest panchanama has been prepared. The deceased had made her dying declaration to the SEM, examined as P.W.10 and for which one Doctor P.W.12 certified her condition. Her body was sent for Postmortem upon her demise which report has been proved through the Doctor P.W.5. Two other doctors P.W.13 and 14 have been examined to prove the condition of the patient upon admission to the hospital and history given at the time of the admission. The deceased suffered 70% to 72% burns. The Investigating Officer has produced the C.A report to show the condition inter alia of the apparels of the deceased which were partly burnt.

4. The evidence of the prosecution is therefore to be considered within a very narrow compass. The evidence of P.W.2, the mother of the deceased read with the inquest panchanama and the dying declaration made by the deceased as recorded by the SEM P.W.10 is the material part of the evidence. The evidence of the doctors and the C.A. Report is required to be used to see the corroboration, if any, of the FIR lodged by the mother and the dying declaration of the deceased victim.
5. It is the case of the prosecution that the deceased was

at her matrimonial residence with the accused when the incident took place on 10th August, 1999 at about 6.30 hours. Whilst she was cooking, the appellant/accused poured kerosene on her person which flared up the flame of the stove which was then in house and which caused severe burns. The dying declaration of the victim, that certifies her condition of consciousness by the doctor P.W.5, sets out her marital condition. It shows that the appellant is the grocer. He had quarrels with her including a quarrel 15 days before the date of the incident. He was pacified by her relatives when she had been to their place, when they had their quarrel and they both had returned to their matrimonial home. It also mentions about the loan of Rs.10,000/- taken by the appellant/accused from her father which her father desired him to return and for which the quarrels used to take place.

6. It then sets out that on 10th August, 1999 at about 6.30 p.m without any reason the accused quarreled with her and threw kerosene on her body while she was working near a stove so as to cause burn injuries to her. Someone (evidence of P.W.11 father of the deceased has revealed that it was one Basheer who gave them the message) reported to her mother and father who lived nearby, so that they came immediately to her house and took her to Unity Hospital at

Nasik. She (the victim) implicated her relatives as the one who were continuously harassing her and the husband as the one who threw kerosene on her while she was near the stove.

7. One such oral dying declaration having been made to the mother, an FIR to that effect was lodged by her mother. The mother has been examined as P.W.2. She has deposed about the oral dying declaration made by her daughter to her. She has also deposed about the ill-treatment and harassment meted upon her daughter which shall be dealt with presently. Her case with regard to the incident has not been upturned in her cross examination. Consequently it is seen that the oral dying declaration made to the mother and the dying declaration recorded by the SEM, P.W.12 are consistent.

8. Upon the incident having taken place a spot panchanama was prepared. P.W.1 has been examined for that purpose. He has, inter alia, deposed that one stove, one kerosene can, burnt saree and burnt pieces of blouse were seized under panchanama.

9. The spot panchanama inter alia shows that there was one gas stove on the kitchen shelf. There was one iron stove

near by on the ground. There was a can half filled with kerosene next to it. The stove has been described as an iron stove with round side-tank. The kerosene bottle of 1 liter was closed by a lid. There was smell on the saree, blouse and the petticoat of the victim. The room does not show any water having been poured for extinguishing any fire.

10. The C.A.'s report shows the detection of kerosene on each of those clothes. It is important to note that the can was half filled with kerosene and closed with lid. It is argued on behalf of the appellant that had the appellant poured kerosene on his wife to set her ablaze, he would not have affixed the lid on the can. We may mention that it is just the reverse. The appellant is a grocer, he is used to handling such cans. If he had used the can which was lying alongside the stove, he would not be expected to have merely put it aside, but to have closed the lid. If he was not present, as is his case, and had not taken part in the incident, but the deceased had died due to an accident as made out by him, the kerosene can in fact may have been left open. If indeed the kerosene can was closed and unused, the flaring of the stove to cause a blaze could not be explained.

11. P.W.14, the Doctor at Unity hospital, Nasik has deposed that the history of the burn injuries upon her admission was

given by her husband and her relatives. They stated that she was burnt while she was cooking on kerosene stove. She was administered emergency treatment. She was in that hospital for 2 days and after which she decided to leave the said hospital against medical advise. This history given by her husband is not in consonance with the P.M. Report.

12. The P.M. Report Exhibit-41 prepared by the Medical Officer, P.W. No.5 shows the deceased having suffered 70% burns. The highest percentage of burns were on her back. This would not have been the case if an accident had taken place while she was cooking. The cause of death is stated to be shock due to septicemia due to 70% burns in the medical certificate. The deceased expired after 4 days – on 14th August, 1999.

13. The dying declaration made by the deceased orally to her mother and then to the SEM, which has been duly documented and thumb impressed by her containing the endorsement of the Doctor of her conscious medical condition, is consistent with the injuries suffered by her as reflected in the PM report Exhibit-14 and the articles found at the spot, in the spot panchanama Exhibit-31. The cross examination of these witnesses has not in the least nullified the effect of their examination-in-chief. The commission of

the offence of murder by the appellant is, therefore, amply made out.

14. To support the case of the appellant that the appellant was not present in his house at the time of the incident, our attention has been drawn to the evidence of PW no.1 a neighbor who has deposed that the victim was alone in the house and told them that she sustained burn injuries due to flaring of the stove. It is easy to conclude this is on unacceptable evidence of a pliable neighbor. As such, his evidence deserves rejection. This witness has not deposed that he did not see the accused in the house or that the accused was out of the house or that he was sent for, from his grocery shop. In fact the evidence shows that the accused was present when the victim was shifted to the hospital and gave history of burns in his hospital upon admission. In fact, his evidence is inconsistent with the spot panchanama prepared by him as panch specifically maintaining about the smell of kerosene on her clothes.

15. It is seen that though the accused has been successful in giving her history at the time of admission in the hospital and caused his neighbors to give similar evidence, inconsistent with the medical records, the accused has not shown that he was in the grocery shop or

anywhere else at the relevant time.

16. The prosecution case of harassment and cruelty upon the victim by her husband as well as her in-laws has been brought put in the evidence of her relatives PW nos. 2, 3,4,9 and 11. The evidence shows loan of Rs.10,000/- taken by the appellant for his grocery business. However, the evidence smacks of certain omissions and contradictions brought out by the defence and becomes unsafe to rely on. It has been the case of the accused that even the relatives of the deceased were in grocery business and required him to join that business due to which disputes arose between the parties. We deem it fit not to be swayed by any evidence relating to the harassment and cruelty caused by the appellant and his relatives to the victim who have been acquitted and against whom no appeal has been filed. We do not find the case of harassment and cruelty punishable under section 498 of the IPC having been made out against the appellant. We, however, do find a clear case of murder of the victim by the appellant.

17. Hence, we maintain the conviction and sentence against the appellant which is R.I. For life punishable under section 302 of IPC as also the amount of fine of Rs.500/- imposed on him and the punishment of R.I. For three

months in default of payment of fine which he has been directed to suffer. However, the conviction and sentence under section 498-A of IPC sentencing him to R.I. For two years and to pay a fine of Rs.300/- and to suffer further R.I. for one month in default is set aside.

18. The substantive sentence of the appellant remains unaltered since both the sentences are directed to run concurrently under the impugned judgment.

19. Consequently, the appeal of the appellant is dismissed save and except the aforesaid modifications of the impugned order dated 30th March, 2001.

(SMT.ROSHAN DALVI, J.) (SHRI. J.N. PATEL, J.)